

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 02-0167P****Sales and Use Taxes
For Calendar Years 1998, 1999, and 2000**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)**I. Tax Administration – Penalty**

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

II. Tax Administration – Interest

Authority: IC 6-8.1-10.1

Taxpayer protests the interest assessed.

STATEMENT OF FACTS

Taxpayer is a contractor of tile flooring, installs carpets, and makes retail sales. Audit determined that the taxpayer had no use tax accrual system in place and failed to pay tax on clearly taxable items such as gas for forklifts, janitorial supplies, office supplies, rental of floor machine, tools, and other miscellaneous items.

I. Tax Administration – Penalty**DISCUSSION**

Taxpayer protests the penalty assessed and states that it misinterpreted the state regulations, which was unintentional.

45 IAC 15-11-2(b) states, “Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer’s carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

Taxpayer failed to self-assess use tax on clearly taxable items and had no use tax accrual system in place. Taxpayer has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer’s protest is denied.

II. Tax Administration – Interest

DISCUSSION

Taxpayer protests the interest assessed, however, the Department has no authority to waive interest.

FINDING

Taxpayer’s protest is denied.

CONCLUSION

Taxpayer’s protest is denied for issues I and II.